



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26847 of 2016

and

W.M.P.No.23064 of 2016

Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001

... Petitioner

VS

1. The General Secretary,
Port & Dock Labour Union,
No.1/675, 1st Street,
Muthamizh Nagar,
Chennai - 600 118.
2. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the record relating to the impugned Award dated 09.04.2014 made in I.D.No.95 of 2012 passed by the Central Government Industrial Tribunal - cum- Labour Court, Chennai, the 2nd respondent herein and quash the Award insofar as paragraph 15(i) of the Award.

For Petitioners : Mr.P.M.Subramaniam

For Respondents : Ms.Subhalaxmi Samanta
for R1



O R D E R

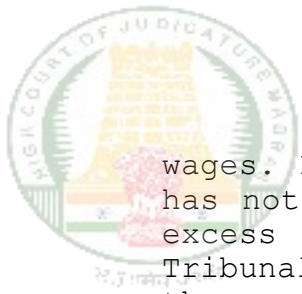
This Writ Petition is filed by the Chennai Port Trust challenging the Award of the Labour Court dated 09.04.2014, wherein and whereby, the petitioner Management was directed to refund the amount that was deducted from the wage revision arrears of the employees as excess amount paid for holidays and rest days and to fix the pay and other allowances of the employees Rathinam and Penchellaiah in par with that of Perumal with retrospective effect and pay the amount due to them. In effect, the Award impugned in the present petition issued two directions. The present writ petition is filed only against the first direction dealing with the refund of the amount that was deducted from the wage revision arrears of the employees as excess amount paid for the holidays and rest days.

2. According to the petitioner, they have made only adjustment to the arrears paid to the members of the first respondent Union towards the excess payment made to them, as it was found that such excess payments were made towards the rest days and holiday wages. It is the case of the Management that in respect of the holiday wages paid, the employees of the Mechanical and Electrical Engineering Department was paid $1\frac{1}{2}$ wages without compensatory off, though they were entitled only for $\frac{1}{2}$ wages with compensatory off. Therefore, it is contended that the excess payment made alone was adjusted and therefore, the Tribunal was not justified in issuing direction for refund.

3. On the other hand, the learned counsel for the first respondent submitted that it is not known as to how the petitioner has come to a conclusion that excess payment has been made to the members of the respondent Union. She further submitted that no working sheet or notice in any manner was issued on the members of the respondent Union disclosing as to how the alleged excess payment was made to them. Therefore, she submitted that the Tribunal was justified in passing the impugned award.

4. A careful perusal of the Award passed by the Tribunal would show that it has issued the impugned direction on the reason that the Management has not produced any evidence to show that the amount paid was in excess of the amount actually due. The Tribunal also pointed out that the settlement under Ex.M1 cannot be relied on by the Management to deny the benefit, since the said settlement clearly states that there will be no changes in the existing method of calculating the holiday wages.

5. The case of the petitioner Management is that some excess payment has been made to the employees towards the holiday



wages. It is seen that though such claim is made, the Management has not placed any materials before the Tribunal as to how such excess payment was made. But in the counter filed before the Tribunal, it is specifically stated by the Management that when the employees of the Mechanical and Electrical Department are entitled for $\frac{1}{2}$ day wages, they have paid $1\frac{1}{2}$ days wages towards the holiday wages.

6. In my considered view, this factual dispute has to first emerge by way of issuing notice with calculation memo by the Management to the respective employees as to how the excess payment was made which is sought to be adjusted. In this case, admittedly, no such notice was issued. Straightaway, the Management has chosen to make such adjustment. Therefore, I am of the view that it is better the Management issues fresh notice with calculation memo as to how the excess payment was made to the employees of the Mechanical and Electrical Department towards holiday wages and pass fresh order after considering the objections, if any, filed by the employees.

7. Accordingly, this Writ Petition is allowed and the impugned direction issued by the Labour Court directing refund of the amount deducted from the wage revision arrears of the employees as excess amount paid for holidays and rest days, is set aside. Consequently, the matter is remitted back to the petitioner Management to issue notice with calculation memo to each of the employees of the Mechanical and Electrical Department as to how the alleged excess payment is made to them. The said notice shall be issued by the petitioner Management within a period of four weeks from the date of receipt of a copy of this order. On receipt of such notice, the respective employees of the Mechanical and Electrical Department are entitled to make objections, if any, before the petitioner Management within a period of two weeks thereafter. On receipt of such objections, the Management will pass fresh orders within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai - 600 006.

+lcc to Mr.P.M.Subramaniam, Advocate sr.105517
+lcc to M/s.Samanta and Ston, Advocate sr.105259

W.P.No.26847 of 2016

ln(co)
nr 27/12/2019